

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

Bky. No. 04-51099 GFK

DENISE C. HOULE,

Debtor.

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**NOTICE OF MOTION AND MOTION OBJECTING  
TO PROPERTY CLAIMED AS EXEMPT**

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TO: THE COURT, THE DEBTOR, THE DEBTOR'S ATTORNEY WALTER W. VASIL, AND  
THE UNITED STATES TRUSTEE

1. Robert R Kanuit, Trustee of the bankruptcy estate of the above-named debtor moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 2:00 p.m., on December 8, 2004, before the Honorable Gregory F. Kishel, in Courtroom 2 at the United States Courthouse, 515 West First Street, in Duluth, Minnesota.

3. Any response to this motion must be filed and delivered not later than December 1, 2004, which is seven (7) days before the time set for the hearing, or filed and served by mail not later than November 28, 2004 which is ten (10) days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. § 522, 11 U.S.C. § 542, Bankruptcy Rules 4003d, 9013 and 9014, and Local Rules 702 and 1201, et seq. This proceeding is a core proceeding. The petition commencing this Chapter 7

case was filed on October 1, 2004. The case is now pending in this Court. Movant is entitled to object to Debtor's claims of exemption pursuant to Bankruptcy Rule 4003.

5. This motion arises under 11 U.S.C. § 522, 11 U.S.C. § 542, and Bankruptcy Rule 4003 and Local Rule 702. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9001-1 to 9006-1 and 9013-1 to 9013-5. Movant requests relief with respect to Debtor's nonexempt property.

6. Debtor has claimed as exempt a personal injury lawsuit claim under 11 U.S.C. §522(d)(11)(D) at a value of \$15,000.00, to which movant objects.

7. Movant objects to debtor's claim of exemption because to the extent that the value of the claim includes payments for pain and suffering or compensation for actual pecuniary loss, it is not exempt under 11 U.S.C. §522(d)(11)(D).

WHEREFORE, trustee, Robert R. Kanuit, moves the Court for an order sustaining his objection to debtor's exemptions and such other relief as may be just and equitable.

Dated this 4th day of November, 2004.

/e/ Robert R. Kanuit  
Robert R. Kanuit (#0252530)  
Chapter 7 Trustee  
4815 W. Arrowhead Road, #230  
Hermantown, MN 55811  
(218) 722-7722

#### **VERIFICATION**

I, Robert R. Kanuit, movant, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated this 4th day of November, 2004.

/e/ Robert R. Kanuit  
Robert R. Kanuit

**UNITED STATES BANKRUPTCY COURT  
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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

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The undersigned, being an employee of Kanuit & Bray, Ltd., attorneys licensed to practice law in this Court, with office address of 4815 W. Arrowhead Road, Hermantown, MN 55811, declares under penalty of perjury that on the date stated below, she served the annexed **Motion Objecting to Property Claimed as Exempt and (proposed) Order** upon the persons named below by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Hermantown, Minnesota, addressed as follows:

Denise C. Houle  
1877 Big Lake Road  
Cloquet, MN 55720

Walter W. Vasil  
Attorney at Law  
200 Board of Trade Building  
Duluth, MN 55802

U.S. Department of Justice  
Office of the United States Trustee  
U.S. Courthouse, Suite 1015  
300 South Fourth Street  
Minneapolis, MN 55415

Dated this 4<sup>th</sup> day of November, 2004.

/e/ Bonnie K. Vanderpool  
Bonnie K. Vanderpool

**UNITED STATES BANKRUPTCY COURT  
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**ORDER**

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At Duluth, Minnesota, on December 8, 2004.

Upon the objection to property claimed as exempt filed by the trustee and upon all the files and records of the proceedings herein,

**IT IS ORDERED:**

The trustee's objection is sustained and the debtor's personal injury lawsuit claim against Mike McKinney is not exempt to the extent any recovery constitutes payment for pain and suffering or compensation for actual pecuniary loss.

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The Honorable Gregory F. Kishel  
United States Bankruptcy Judge